

# ATTACHMENT 1

## DRAFT MEMORANDUM OF UNDERSTANDING AMONG THE STATE WATER RESOURCES CONTROL BOARD, INTEGRATED WASTE MANAGEMENT BOARD, DEPARTMENT OF TOXIC SUBSTANCE CONTROL AND THE DEPARTMENT OF FOOD AND AGRICULTURE

This Memorandum of Understanding (MOU) is among the State Water Resources Control Board (SWRCB), Integrated Waste Management Board (IWMB), the Department of Toxic Substance Control (DTSC) and the Department of Food and Agriculture (F&A).

The SWRCB, IWMB, DTSC and F&A have responsibilities to protect against the potential adverse effects of pathogens, heavy metals and other hazardous materials within their respective jurisdictions. All four agencies concur that the State will benefit from a unified and cooperative program.

### WHEREAS:

1. The purpose of this MOU is to:

- (a) Enter into a voluntary agreement between four agencies having discretionary and complementary authority regarding pathogens and heavy metals in fertilizers and soil amendments and their desposition to land.
- (b) Ensure that all fertilizers and soil amendments registered in California do not exceed risk-based standards for care of potential detriments, pathogens and heavy metals and are used in a manner that protects water quality, the beneficial uses of water and public health, safety and the environment while providing effective, environmentally sound soil treatment that does not constitute disposal.
- (c) Identify roles and responsibilities of the four agencies regarding this issue, and to describe how the agencies will work cooperatively.
- (d) Coordinate respective authorities in a cohesive manner to eliminate duplication of effort and inconsistency of action.
- (e) Coordinate respective authorities to solve problems related to fertilizer and soil amendment production, sales and use by promoting the development and use of appropriate manufacturing and application practices through both self-regulatory and regulatory efforts.

2. F&A is the lead agency for fertilizer and soil amendment regulation in California. F&A has the authority and responsibility in the Food and Agricultural Code (FAC) to:

- (a) Provide for the proper, safe, and efficient use of fertilizer and soil amendments that are essential for protecting the public health and safety in the production of food, ornamental horticulture, and for other uses.
- (b) Protect public health and the environment from harmful byproducts or incidental ingredients by prohibiting, regulating, or controlling contents of harmful byproducts or incidental ingredients as well as uses of such fertilizers and soil amendments.

- (c) Assure safe working conditions where fertilizers and soil amendments are present.
  - (d) Permit fertilizer and soil amendment application by competent and responsible licensees, certificate holders, permittees, and operator identification holders under strict control of F&A.
  - (e) Ensure that fertilizers and soil amendments are properly labeled and appropriate for the use designated by the label.
  - (f) Encourage the development and implementation of fertilizer and soil amendment management systems to achieve levels of control with the least possible harm to nontarget organisms and the environment.
  - (g) Continuously evaluate fertilizer and soil amendments to determine if any endanger the agricultural or nonagricultural environment, placing appropriate restrictions on use including limitations on quantity used, area treated, and manner of application.
  - (h) Establish, as necessary, criteria to evaluate environmental effects of fertilizers and soil amendments.
  - (i) Coordinate with other local, state, and federal agencies responsible for environmental issues regarding fertilizers, soil amendments, water quality and public health, safety and the environment.
3. The Porter-Cologne Water Quality Control Act establishes a comprehensive water quality control program for California. The Federal Clean Water Act adds additional water quality control provisions to be implemented nationwide. The SWRCB and the nine California Regional Water Quality Control Boards (RWQCBs) are responsible for protecting the beneficial uses of water in California and for controlling all discharges of waste into both surface and ground waters of the State. The SWRCB sets overall State policy, hears petitions to review RWQCB decisions, and adopts or approves all water quality control plans. These plans contain designation of the beneficial uses of the waters of the State, both numeric and narrative water quality objectives, as well as implementation guidance. The RWQCBs have primary responsibility for permitting, inspection, and enforcement actions. The RWQCBs implement and enforce the policies adopted by the SWRCB.
4. The IWMB, acting as the enforcement agency, or IWMB certified local enforcement agencies, are the lead agencies for regulating disposal of solid waste in California. The IWMB has the authority and responsibility, as provided in the Integrated Waste Management Act, to establish state minimum standards and permitting requirements for solid waste disposal for the protection of public health, safety, and the environment. Enforcement agencies enforce those requirements. When waste-derived materials are improperly used as fertilizers or soil amendments, solid waste disposal may occur, requiring action by the enforcement agency.
5. DTSC is responsible for implementation of California's Hazardous Waste Regulatory Program which includes both federal law and the broader and more stringent state laws and regulation.

Hazardous wastes that are recycled at commercial offsite facilities including those recycled into fertilizer products are fully regulated under California's Hazardous Waste Program. This includes

compliance with generator and transportation requirements as well as delivery to a facility authorized by DTSC to handle that waste.

Products manufactured from these wastes are generally (with some exceptions) required under state and federal hazardous waste laws to meet applicable standards.

DTSC permits recycling facilities, inspects them for compliance with applicable laws and permit requirements and takes necessary enforcement actions for identified non-compliance.

THE AGENCIES AGREE AS FOLLOWS:

1. F&A agrees:

- (a) To implement, in coordination with SWRCB, RWQCB, IWMB, and DTSC, in a manner consistent with and in conformity with SWRCB, RWQCB, IWMB, and DTSC plans, policies, and regulations and state and federal laws, regulations and policies so that water quality and public health, safety, and the environment is protected from adverse impacts due to the use of fertilizers and soil amendments registered in California and use of fertilizers and soil amendments does not become disposal of solid waste.
- (b) To have F&A staff confer with SWRCB, RWQCB, DTSC and IWMB staff when developing reduced-risk practices, quantitative response limits, and required use restrictions.
- (c) To accept the MOU as a coordinated effort for protecting public health and the environment from the potentially harmful effects of fertilizers and soil amendments.

2. The SWRCB, IWMB and DTSC agree:

- (a) To accept the MOU as a coordinated effort for protecting water quality and beneficial uses of water and public health, safety, and the environment from the potential harmful effects from the use of fertilizers and soil amendments.
- (b) To have staff and management actively participate in implementation of the MOU and identify concerns regarding the regulation of fertilizer and soil amendment products due to existing laws, regulations, policies, and water quality control plans or changes in any of these.
- (c) To have staff confer with F&A when developing or revising water quality objectives or other environmental or public health and safety laws, regulations or policy standards for the manufacturing sale or use of fertilizers and soil amendments.
- (d) Appoint representatives to F&A facilitated regulatory process for development of regulations for heavy metals.

3. The SWRCB, IWMB, DTSC and F&A mutually agree:

- (a) The provisions of the MOU are not intended to be the subject of any third party actions to enforce such provisions and that decisions concerning the adequacy of compliance with the provisions of the MOU are solely within the discretion of the signatory agencies.
- (b) That nothing in the MOU is intended to abrogate any legal requirement on any person or agency.
- (c) To collect, exchange, and disseminate information on (1) the manufacturing, sale and use of fertilizers and soil amendments, (2) impacts on the quality of the State's waters and/or public health, safety, and the environment from such uses, (3) any efforts to mitigate those impacts, (4) agronomics rates, (5) soil loading levels, (6) bioaccumulation, and (7) uses of waste-derived materials for fertilizer and soil amendments.
- (d) To share information on fertilizer and soil amendment formulations, environmental fate and toxicity of active ingredients, inert ingredients, other incidental ingredients and breakdown products. Procedures to protect proprietary information shall be developed between agencies and incorporated into the MOU prior to exchange of information.
- (e) To convene interagency staff meetings at least biannually to discuss existing and proposed projects of mutual interest and to serve as a forum for considering changes to the MOU.
- (f) To consult each other in developing or revising statutes and regulations relative to fertilizers and soil amendments which may impact water quality and/or public health, safety, and the environment.
- (g) To participate in developing State regulations, policies, guidelines, water quality control plans, and management plans relatives to fertilizer and soil amendment manufacturing sale and use and water quality and/or public health, safety, and the environment.
- (h) To work in cooperation with regulated industries, researchers, and educators to identify issues and develop mitigation strategies.
- (i) To promote the development and implementation of reduced-risk standards and practices to protect the beneficial uses of the waters of the State and/or public health, safety, and the environment from the potentially adverse effects of certain fertilizers and soil amendments.
- (j) To develop a feasible surface and ground water monitoring strategy which considers anticipated funding and supports the implementation of the MOU.
- (k) To hold public workshops to discuss the implementation of the MOU.
- (l) That all references to the parties in the MOU include staff to the extent the action is delegable.

MODIFICATION/RECISION

This MOU shall become effective upon the date of final signature and shall continue in effect until modified by the mutual written consent of the parties or until terminated by any party upon a 30-day advance written notice to the other parties.

DEPARTMENT OF FOOD AND AGRICULTURE  
Approves

\_\_\_\_\_  
ANN M. VENEMAN, Secretary

\_\_\_\_\_  
Date

STATE WATER RESOURCES CONTROL BOARD  
Approves

\_\_\_\_\_  
WALT PETTIT, Executive Director

\_\_\_\_\_  
Date

INTEGRATED WASTE MANAGEMENT BOARD  
Approves

\_\_\_\_\_  
RALPH E. CHANDLER, Executive Director

\_\_\_\_\_  
Date

DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
Approves

\_\_\_\_\_  
JESSE R. HUFF, Director

\_\_\_\_\_  
Date

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
Concurs

\_\_\_\_\_  
PETER M. ROONEY, Secretary

\_\_\_\_\_  
Date